

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

February 6, 2008 Session at the University of Tennessee College of Law<sup>1</sup>

**SANDI C. HUBBARD v. MYRON L. HUBBARD**

**Appeal from the Circuit Court for Blount County**  
**No. E-17440     W. Dale Young, Judge**

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**No. E2007-00849-COA-R3-CV - FILED MAY 29, 2008**

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In this post-divorce case, Myron L. Hubbard (“Husband”) filed a “Motion” asking the trial court to suspend his alimony obligation to Sandi C. Hubbard (“Wife”). Wife responded with a “Motion to Dismiss and to Increase Alimony,” in which she asserted that: 1) Husband’s “Motion” should be dismissed for failure to state a claim; 2) Husband’s alimony obligation should be *increased*; 3) Wife should be awarded attorney fees; and 4) Husband should be held in contempt for a missed alimony payment. At the conclusion of a bench trial, the court denied Husband’s “Motion,” ruling that he had failed to prove a material change in circumstances that would justify suspending alimony. The court took no action on Wife’s “Motion.” Husband appeals. Wife argues that the trial court’s judgment was not an appealable final order, as it “adjudicates fewer than all the claims.” Tenn. R. App. P. 3(a). We agree with Wife. Accordingly, we dismiss the appeal.

**Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which SHARON G. LEE, J., and NORMA M. OGLE, Sp. J., joined.

Eugene B. Dixon, Maryville, Tennessee, for the appellant, Myron L. Hubbard.

Sandra G. Olive, Knoxville, Tennessee, for the appellee, Sandi C. Groover, formerly Hubbard.

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<sup>1</sup>Oral argument was heard in this case before law students at the University of Tennessee College of Law as a part of the Court’s annual Docket Day at the College.

## MEMORANDUM OPINION<sup>2</sup>

It is well-settled that “pleas shall be given the effect required by their content, without regard to the name given them by the pleader.” *State By and Through Canale ex rel. Hall v. Minimum Salary Dept. of African Methodist Episcopal Church, Inc.*, 477 S.W.2d 11, 12 (Tenn. 1972). Therefore, although each of the parties labeled their filing as a motion, it is apparent that Husband’s initial pleading was in fact a complaint, and Wife’s responsive pleading seeking affirmative relief was in fact a counterclaim coupled with a motion to dismiss. As noted already, Wife raised three separate claims for relief, in addition to her request that Husband’s claim be dismissed. Yet Wife’s claims for relief were never adjudicated. In fact, they were not even mentioned at the bench trial, and the court announced its ruling at the conclusion of Husband’s evidence, which related solely to his claim. The court prefaced the verbal announcement of its ruling by referring to Husband’s claim as “the issue before the Court right now,” and neither the memorandum opinion nor the written order includes any reference to Wife’s claims for relief. In sum, the record makes plain that the court’s judgment was limited to holding that Husband had failed to make out a *prima facie* case in support of his claim. Further, there is no indication in the record that Wife withdrew her claims for relief or otherwise acquiesced in the court’s failure to consider them at the bench trial from which this appeal was taken.

Tenn. R. App. P. 3(a) provides, in pertinent part, as follows:

Except as otherwise permitted in Rule 9 and in Rule 54.02 Tennessee Rules of Civil Procedure, if . . . multiple claims for relief are involved in an action, any order that adjudicates fewer than all the claims . . . *is not enforceable or appealable* and is subject to revision at any time before entry of a final judgment adjudicating all the claims, rights, and liabilities of all parties.

(Emphasis added.) Tenn. R. App. P. 9 is not applicable, and the court did not act pursuant to Tenn. R. Civ. P. 54.02, which states that a trial court “may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an *express determination* that there is no just reason for delay and upon an *express direction* for the entry of judgment.” (Emphasis added.) Rule 54.02 applies whenever “more than one claim for relief is present in an action, whether as a claim, counterclaim, cross-claim, or third party claim,” and the rule’s requirements are “an absolute prerequisite to an appeal.” *Fox v. Fox*, 657 S.W.2d 747, 749 (Tenn. 1983). Therefore, in

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<sup>2</sup> Rule 10 of the Rules of the Court of Appeals provides as follows:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

accordance with Tenn. R. App. P. 3(a), the trial court's order "is not . . . appealable." We consequently lack subject matter jurisdiction to hear this appeal.

This appeal is hereby dismissed. Costs on appeal are taxed to the appellant, Myron L. Hubbard. This case is remanded to the trial court for further proceedings, pursuant to applicable law.

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CHARLES D. SUSANO, JR., JUDGE